

1 BILL NO. S-92-06-09

1 SPECIAL ORDINANCE NO. S-107-92

2 AN ORDINANCE approving Contract FOR  
3 SEWER CONTRACT 478-1992, LIME SLUDGE  
4 LAGOON LIFT STATION AND SEWER LINE  
5 between EARTH CONSTRUCTION, INC. and  
the City of Fort Wayne, Indiana, in  
connection with the Board of Public  
Works.

6 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
7 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

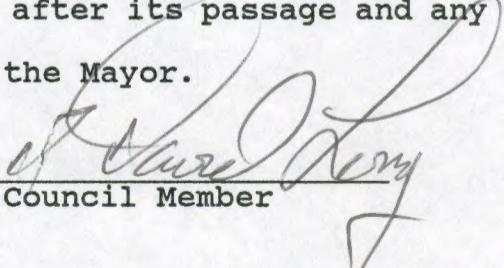
8 SECTION 1. That the Contract FOR SEWER  
9 CONTRACT 478-1992, LIME SLUDGE LAGOON LIFT STATION AND  
10 SEWER LINE by and between EARTH CONSTRUCTION, INC. and  
11 the City of Fort Wayne, Indiana, in connection with the  
12 Board of Public Works, is hereby ratified, and affirmed  
13 and approved in all respects, respectfully for:

14 the reconstruction of a sanitary sewer line and lift  
15 station intended and adapted for use by the Fort Wayne  
16 Water Pollution Control Utility in conjunction with and  
17 as an integral part of its lagoon system and the same is  
18 hereby ordered on and along the following described line:  
Beginning at an existing sanitary sewer manhole 1,870± LF  
South and 1,470± LF West of the Northeast corner of the  
Northeast One-quarter (1/4) of Section 4, Township 30  
North, Range 13 East, thence Southerly 2,800± LF;

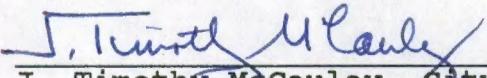
19 involving a total cost of One Hundred Ninety-Nine  
20 Thousand Nine Hundred Thirty-Eight and 75/100 Dollars  
21 (\$199,938.75).

22 SECTION 2. Prior Approval has been requested  
23 from Common Council on MAY 26, 1992. Two copies of said  
24 Contract are on file with the Office of the City Clerk  
25 and made available for public inspection, according to  
26 law.

27 SECTION 3. That this Ordinance shall be in  
28 full force and effect from and after its passage and any  
29 and all necessary approval by the Mayor.

30   
31 Council Member

32 APPROVED AS TO FORM  
AND LEGALITY

  
33 J. Timothy McCaulay, City Attorney

## CONSTRUCTION CONTRACT

### **LIME SLUDGE LAGOON LIFT STATION AND SEWER LINES SEWER CONTRACT 478-1992**

BOARD ORDER NO. 59-92

WORK ORDER NO. 73772

THIS CONTRACT made and entered into this 3 day of JUNE 1992, by and between EARTH CONSTRUCTION INC., hereinafter called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works & Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

#### **ARTICLE 1: SCOPE OF WORK**

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

The reconstruction of a sanitary sewer line and lift station intended and adapted for use by the City of Fort Wayne Water Pollution Control Utility in conjunction with and as an integral part of its lagoon system and the same is hereby ordered on and along the following described line: Beginning at an existing sanitary sewer manhole 1,870± LF South and 1,470± LF West of the Northeast corner of the Northeast One-Quarter (1/4) of Section 4, Township 30 North, Range 13 East, thence Southerly 2,800 ± LF.

Said sanitary sewer with all its appurtenances shall be constructed in accordance with the City of Fort Wayne Sewer Utility Standards and Specifications, all according to Resolution #478-1992, Lime Sludge Lagoons Lift Station and Sewer Lines, and Drawing No. SY-10980, Sheets 1 through 5, and do everything required by this contract and the other documents constituting a part hereof.

#### **ARTICLE 2: THE CONTRACT PRICE**

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of **ONE HUNDRED NINETY-NINE THOUSAND NINE HUNDRED THIRTY-EIGHT AND 75/100 DOLLARS (\$199,938.75)**. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR'S proposal.

### **ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE**

The CONTRACTOR may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten (10%) percent of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with the E.B.E. Rider attached to this contract. Payments to the contractor are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of \$100,000 the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed. Payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the OWNER to promptly make such inspection, and will direct the Contract Compliance Department of the OWNER to make a final recommendation on whether the CONTRACTOR made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the Engineering Department finds the work acceptable under the contract and the contract is fully performed, it shall so inform the Board of Public Works. Likewise, when the Contract Compliance Department determines that the CONTRACTOR'S efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the Board of Public Works through an E.B.E. Compliance Final Report.

Upon receiving both the Engineering Department's and the Contract Compliance Department's recommendations, the Board of Public Works shall issue a final certificate stating that the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the contract sum shall be due and payable to the CONTRACTOR; provided only that the CONTRACTOR shall first furnish OWNER, if requested to do so,

satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the Board of Public Works determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and **CONTRACTOR** agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000 the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with the Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages or injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any subcontractor or subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

#### **ARTICLE 6: NON-DISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-34-78 (as amended) on December 12, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

## **ARTICLE 7: PREVAILING WAGE SCALE**

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne, according to the applicable wage scale as included in the bid documents.

## **ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 478-1992
- b. Instructions to Bidders for Contract No. 478-1992
- c. Contractor's Proposal dated May 6, 1992
- d. Fort Wayne Engineering Department Drawing #SY10980
- e. Supplemental Specifications for Contract No. 478-1992
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended)
- h. Prevailing Wage Scale
- i. Performance and Guaranty Bond
- j. Labor and Material Payment Bond
- k. Minority/Female Employment Hourly Utilization
- l. Right-of-Way Cut Permit
- m. Comprehensive Liability Insurance Coverage
- n. EBE Declaration Form

## **ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this Contract, the **CONTRACTOR** shall furnish a Performance and Guaranty bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER**.

## **ARTICLE 10: INDEMNITY**

**CONTRACTOR** shall furnish to **OWNER** within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the Statutes of the State of Indiana.

## **ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications or other phases of the work covered by this contract will be permitted except on prior written authorization by the Board of Public Works & Safety.

## **ARTICLE 12: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract within 90 consecutive calendar days after having been ordered by the **OWNER** to commence work under this contract.

## **ARTICLE 13: COUNCILMANIC APPROVAL**

This agreement, although executed on behalf of the **OWNER** by the Mayor and Board of Public Works & Safety of the City of Fort Wayne, Indiana, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

## **ARTICLE 14:**

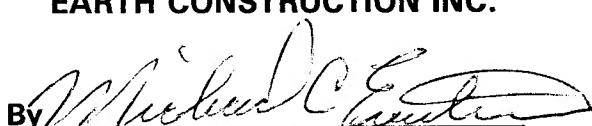
This contract is governed by the Laws of the State of Indiana.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

**CONTRACTOR:**

**EARTH CONSTRUCTION INC.**

By



Michael C. Evertson

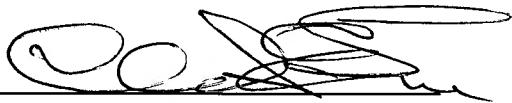
President

**CITY OF FORT WAYNE**

By

Paul Helmke  
Mayor

BOARD OF PUBLIC WORKS & SAFETY



Charles Layton, Director  
Public Works

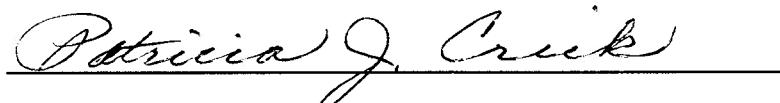


Katherine A. Carrier  
Katherine A. Carrier, Member



C. James Owen  
C. James Owen, Member

ATTEST:



Patricia J. Creek

ACKNOWLEDGEMENT

STATE OF INDIANA      )  
                            )SS  
COUNTY OF ALLEN      )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Paul Helmke, Mayor; Charles Layton, Katherine A. Carrier and Douglas M. Lehman, all as Directors of the Board of Public Works & Safety of the City of Fort Wayne, Indiana, and acknowledged the execution of the foregoing Contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
Printed Name of Notary  
Resident of \_\_\_\_\_ County

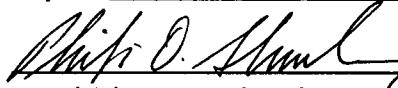
My Commission Expires:  
\_\_\_\_\_

## ACKNOWLEDGEMENT

STATE OF INDIANA      )  
                            )SS  
COUNTY OF ALLEN      )

Before me, the undersigned, a Notary Public, in and for said County and State personally appeared Michael C. Evertson, who acknowledged the execution of the foregoing Contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and seal this 28th day of May 1992.

  
Philip D. Shockney Notary Public  
Printed Name of Notary  
Resident of Allen County

My Commission Expires:

02-08-93

This instrument prepared by:  
Terry L. Atherton, P.E., L.S., Director  
Water Resources/Engineering & Services

APPROVED BY THE Common Council of the City of Fort Wayne, Indiana, on the  
       day of        1992.

SPECIAL ORDINANCE:

**E.B.E. RIDER**

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner" and EARTH CONSTRUCTION INC., hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the LIME SLUDGE LAGOON LIFT STATION AND SEWER LINES, which project was bid under Resolution Number 478-1992; and,

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as "E.B.E.'s" as subcontractors on this project is 10 % of the contract amount; and,

WHEREAS, Owner has, pursuant to Executive Order 90-01, adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and,

WHEREAS, said Executive Order states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award. Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.
2. E.B.E. Retainage Requirements. If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten (10%) percent of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full. In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,00 the contract will be subject to the Standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver. If at the time final payment application is made, contractor has not attained the 10 % E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % E.B.E. goal.
4. Determination of Waiver Requests. The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.
5. Good Faith Per Se. In any case, a contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.

6. Consequence of Non-Compliance. In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved. In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 28th day of May 1992.

By:   
Earth Construction, Inc. Michael C. Evertson, President

By: BOARD OF PUBLIC WORKS  
  
Charles E. Layton, Director of Public Works

Katherine A. Carrier  
Katherine A. Carrier, Member

C. James Owen  
C. James Owen, Member

ATTEST: Patricia J. Crick  
Patricia J. Crick, Clerk

TO: CITY ATTORNEY  
FROM: BOARD OF PUBLIC WORKS

APPROVED BY: Charles E. Layton

DATE: June 3, 1992

SUBJECT: Sewer Contract 478-1992, Lime Sludge Lagoon Lift  
Station and Sewer Line

FILE # ASSIGNED BY RECORD LIBRARIAN

ACTION REQUEST: Please prepare ordinance to be introduced on June 9, 1992 approving Sewer Contract #478-1992, Lime Sludge Lagoon Lift Station and Sewer Line. Earth Construction, Inc., is the contractor.

M., E.S.T.

DATED:

6-9-92)

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Long,  
and duly adopted, placed on its passage. PASSED Long  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
<u>TOTAL VOTES</u>	9			
<u>BRADBURY</u>	✓			
<u>EDMONDS</u>	✓			
<u>GiaQUINTA</u>	✓			
<u>HENRY</u>	✓			
<u>LONG</u>	✓			
<u>LUNSEY</u>	✓			
<u>RAVINE</u>	✓			
<u>SCHMIDT</u>	✓			
<u>TALARICO</u>	✓			

DATED:

6-23-921

SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)  
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. J-107-  
23-11 J 107

ATTEST:

(SEAL.)

SANDRA E. KENNEDY, CITY CLERK

**PRESIDING OFFICER**

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 24th day of June, 1990  
at the hour of 11:30 o'clock A.M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 25th day of June, 1992, at the hour of 4:15 o'clock P.M., E.S.T.

PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Sewer Contract 478-92, Lime Sludge Lagoon Lift Station and Sewer Line

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Sewer Contract 478-1992, is for the reconstruction of a sanitary sewer line and lift station intended and adapted for use by the Fort Wayne Water Pollution Control Utility in conjunction with and as an integral part of its lagoon system and the same is hereby ordered on and along the following described line: Beginning at an existing sanitary sewer manhole 1,870± LF South and 1,470± LF West of the Northeast corner of the Northeast One-Quarter (1/4) of Section 4, Township 30 North, Range 13 East, thence Southerly 2,800± LF.  
PRIOR APPROVAL RECEIVED MAY 26, 1992.

EFFECT OF PASSAGE: Installation of a Storm Sewer as described above.

EFFECT OF NON PASSAGE:

*S-92-06-09*

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$199,938.75

ASSIGNED TO COMMITTEE:

BILL NO. S-92-06-09

REPORT OF THE COMMITTEE ON  
CITY UTILITIES

DAVID C. LONG, CHAIR  
SAMUEL J. TALRAICO, VICE CHAIR  
LUNSEY, BRADBURY

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS  
REFERRED AN (ORDINANCE) (REQUETION) APPROVING CONTRACT FOR  
SEWER CONTRACT 478-1992, LIME SLUDGE LAGOON LIFT STATION AND  
SEWER LINE between EARTH CONSTRUCTION, INC., and the City of Fort  
Wayne, Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (RESOLUTION) \_\_\_\_\_

DO PASS

DO NOT PASS

## ABSTAIN

NO REC

Sam J. Talarico  
McKinley  
John E. Henry

DATED: 6-23-92

Sandra E. Kennedy  
City Clerk